

APPROVED	
DATE	November 21, 2002
[Signature]	
[Signature]	
[Signature]	
[Signature]	
[Signature]	
COMMISSIONERS, D.T.E.	

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
21 CUSTOM HOUSE STREET
BOSTON, MASSACHUSETTS 02110-3525
(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

November 1, 2002

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: Commonwealth Electric Company/Mirant Canal, LLC
Restated Second Amendment Agreement for Back-Up and Maintenance Service

Dear Secretary Cottrell:

Pursuant to G.L. c. 164, § 94, enclosed for approval by the Department of Telecommunications and Energy (the "Department") is the Restated Second Amendment (the "Amendment") to the Service Agreement that Commonwealth Electric Company ("Commonwealth" or the "Company") executed with Mirant Canal, LLC ("Mirant") (formerly, Southern Energy Canal, LLC) on March 1, 2002.¹ Pursuant to § 5.3.I of the Amendment, the Transition Charges to be incurred for service under the Agreement shall be based on the Company's average transition charge as filed with the Department. Previously, the Agreement set forth the specific Transition Charge to be incurred by Mirant, thereby requiring the parties to amend the Service Agreement each time a new Transition Charge tariff was approved by the Department. This Amendment is designed to alleviate the need for the parties to amend the Service Agreement whenever the Company files a new Transition Charge tariff.

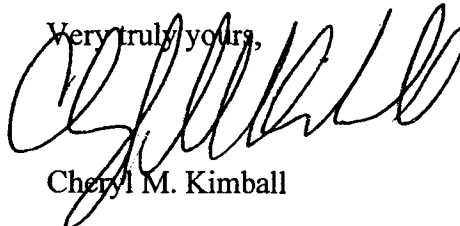
The Company respectfully requests that the Department approve the enclosed Agreement by November 30, 2002. If you have any questions concerning this filing,

¹ The Service Agreement outlines the terms and conditions whereby the Company supplies Back-Up and Maintenance Service to two of Mirant's generating stations. The Service Agreement was executed on December 30, 1998, and the First Amendment to the Service Agreement (wherein the transition charge was amended to reflect changes in the Company's rate tariffs) was executed on January 15, 1999. The Department approved both agreements simultaneously on February 25, 1999. See Commonwealth Electric Company, EC 98-11 (1999). Subsequently, on April 26, 2000, the parties executed a Second Amendment to the Service Agreement wherein the Transition Charge was again amended to reflect changes to the Company's rate tariffs.

Letter to Secretary Cottrell
November 1, 2002
Page 2

please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Cheryl M. Kimball', written over the typed name.

Cheryl M. Kimball

Enclosures

cc: Paul G. Afonso, General Counsel
Ronald LeComte, Director, Electric Power Division
Kevin Brannelly, Director, Rates and Revenues Requirements Division

RESTATED SECOND AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE
BETWEEN
COMMONWEALTH ELECTRIC COMPANY
AND
MIRANT CANAL, L.L.C.

RESTATED SECOND AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE

This Restated Second Amendment dated as of the 1st day of March, 2002 to the Service Agreement For Back-up and Maintenance Service dated December 30, 1998 ("Agreement"), and amended on the 15th day of January 1999 ("First Amendment"), by and between COMMONWEALTH ELECTRIC COMPANY, a Massachusetts corporation having a place of business at 800 Boylston Street, Boston, Massachusetts 02090 ("Commonwealth"), and MIRANT CANAL, L.L.C., a Delaware limited liability company with its principal place of business at 9 Freezer Road, Sandwich, Massachusetts 02563 ("Mirant Canal"), supercedes and replaces the Second Amendment, dated as of April 26, 2000.

Section 1: Scope of Agreement

- (a) Mirant Canal is a successor in interest to Southern Energy Canal, L.L.C., an original party to the Agreement.
- (b) Commonwealth now has a place of business at 800 Boylston Street, Boston, Massachusetts 02090.
- (c) Under the Agreement, as amended by the First Amendment, Commonwealth supplies Back-Up and Maintenance Service to Canal Unit 1 and Canal Unit 2 located in Sandwich, Massachusetts (together, the "Canal Units").
- (d) Article V of the Agreement provides the Rates and Charges applied to the Canal Units for Back-Up and Maintenance Service under the Agreement.
- (e) Section 5.3 E. of the Agreement, as modified by the First Amendment, provides the Transition Charges applicable to service under the Agreement. In order to allow for changes to the Transition Charges from time to time consistent with Commonwealth's annual filings with the MDTE, Commonwealth and Mirant Canal have agreed to add an additional Section to the Agreement as described below.

Now, therefore, the parties hereto, each in consideration of the agreement of the other, hereby agree as follows:

Section 2: Amendment

- (a) The Agreement is amended by adding a new Section 5.3 I. as follows:

I. Transition Charge Adjustment:

The Transition Charges applicable to service under the Agreement as set forth in Section 5.3 E shall be adjusted from time to time to reflect Commonwealth's current average transition charge applicable to retail rate schedules as on file with the MDTE.

- (b) The Agreement shall remain in full force and effect in accordance with the terms thereof except as such terms are explicitly modified by the provisions of this Restated Second Amendment.

Section 3: Miscellaneous

- (a) This Restated Second Amendment may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Restated Second Amendment to be executed by their respective representatives thereunto duly authorized as of the day and year first above-written.

COMMONWEALTH ELECTRIC COMPANY

By: 

Douglas S. Moran
Senior Vice President

MIRANT CANAL, L.L.C.

By: 

Michael R. Kirkwood
Vice President and Managing Director



800 Boylston Street
Boston, Massachusetts 02199

C. Montague

The NSTAR Companies
Boston Edison
ComElectric
ComGas
Cambridge Electric

May 2, 2000

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: Commonwealth Electric Company Back-Up and Maintenance Service Agreement With Southern Energy Canal, LLC

Dear Madam Secretary:

Pursuant to the requirements of M.G.L., c. 164, § 94, Commonwealth Electric Company ("Commonwealth" or the "Company") hereby tenders for filing with the Massachusetts Department of Telecommunications and Energy ("Department") the second amendment, dated April 26, 2000 ("Second Amendment"), to an agreement dated December 30, 1998 ("Agreement") between itself and Southern Energy Canal, L.L.C. ("Southern Canal") for the delivery of Back-Up and Maintenance Service to Southern Canal's electric generating facility consisting of Canal Unit 1 and Canal Unit 2 located in Sandwich, Massachusetts (the "Canal Units"). The Second Agreement (1) revises the Transition Charges applicable under the Agreement to reflect Commonwealth's current transition charge, which was approved by the Department for effect January 1, 2000, and (2) provides a method for adjusting the Transition Charges as Commonwealth's generally applicable transition charge changes, without the need for amending the Agreement each time such change occurs. The proposed Second Amendment is included herein as Attachment 1.

By way of background, the Agreement sets forth the terms and conditions under which Commonwealth provides the delivery of power needed to operate essential facilities and devices at the Canal Units. That power, known as Station Service, is required to power lights, pumps, fuel heating equipment, and other facilities and devices located at the generating station. When the Canal Units are operating, those units furnish Station Service. When the units are not operating, Station Service must be replaced. Under the Agreement, Commonwealth provides the replacement Station Service when the Canal Units are out of service. A copy of the initial Agreement is included herein as Attachment 2.

Consistent with the requirements of G.L. c. 164, § 1G and the Standard of Review for Electric Contracts Filed Pursuant to G.L. c. 164, § 94, D.P.U./D.T.E. 96-39-A (October 27, 1998), the Agreement includes a non-bypassable Transition Charge as a rate component (Section 5.3.E). The Transition Charges that were included in the initial Agreement were subsequently changed to reflect a newly approved transition charge for Commonwealth. On January 19, 1999, Commonwealth filed

with the Department the First Amendment to the Agreement to adjust the Transition Charges under the Agreement based on the change in the Company's generally applicable transition charge. The First Amendment is included herein as Attachment 3. On February 25, 1999, the Department approved the Agreement, as amended by the First Amendment (docket EC 98-11). A copy of the Department's Letter Order approving the Amended Agreement is included herein as Attachment 4.

In the proposed Second Amendment, Commonwealth has included a provision to adjust the Transition Charges to reflect the Company's current average transition charge. This adjustment provision uses the Transition Charges set forth in the Amended Agreement as a base and then applies an adjustment factor based on the ratio of the Company's current average transition charge divided by the sum of \$0.03159 per kilowatthour ("kWh") and the Transition Cost Adjustment. The line item \$0.03159 per kWh represents Commonwealth's average transition charge that was in place at the time the Amended Agreement became effective. Included herein as Attachment 5 is a calculation of the demand-based Transition Charges that would apply under the adjustment provision in the proposed Second Amendment.

Please address any inquiries or correspondence regarding this filing to:

John Cope-Flanagan, Esq.
NSTAR Services Company
800 Boylston Street
Boston, MA 02199-3802
Telephone: (617) 424-3802
Facsimile: (617) 424-2733

Commonwealth will be pleased to provide such additional information as the Department may request in this matter.

Sincerely,



Henry LaMontagne
Director Regulatory Policy & Rates

Attachments

cc: Paul Afonso, Esq. - General Counsel
Ronald LeComte, Director - Electric Power Division
Kevin T. Brannelly, Director - Rates and Revenue Requirements Division
George B. Dean, Esq. - Assistant Attorney General

ATTACHMENT 1
SECOND AMENDMENT TO SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE

SECOND AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE
BETWEEN
COMMONWEALTH ELECTRIC COMPANY
AND
SOUTHERN ENERGY CANAL, L.L.C.

RESTATE

**SECOND AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE**

Agreement of Amendment made this 28th day of April, 2000 by and between COMMONWEALTH ELECTRIC COMPANY, a Massachusetts corporation having a place of business at 2421 Cranberry Highway, Wareham, Massachusetts 02571 ("Commonwealth"), and SOUTHERN ENERGY CANAL, L.L.C., a Delaware limited liability company with its principal place of business at 9 Freezer Road, Sandwich, Massachusetts 02563 ("Southern Canal") ("Second Amendment").

Section 1: Scope of Agreement

- (a) Southern Canal and Commonwealth are parties to an agreement dated December 30, 1998, as amended on the 15th day of January 1999 ("First Amendment"), under which Commonwealth supplies Back-Up and Maintenance Service to Canal Unit 1 and Canal Unit 2 located in Sandwich, Massachusetts (together, the "Canal Units") ("Agreement").
- (b) Article V of the Agreement provides the Rates and Charges applied to the Canal Units for Back-Up and Maintenance Service under the Agreement.
- (c) Section 5.3 E. of the Agreement, as modified by the First Amendment, provides the Transition Charges applicable to service under the Agreement. In order to allow for changes to the Transition Charges from time to time consistent with Commonwealth's annual filings with the MDTE, Commonwealth and Southern Canal have agreed to add an additional Section as described below.

Now, therefore, the parties hereto, each in consideration of the agreement of the other, hereby agree as follows:

Section 2: Amendment

- (a) The Agreement is amended by adding a new Section 5.3 I. as follows:

I. Transition Charge Adjustment:

The Transition Charges applicable to service under the Agreement ~~shall be the Transition Charges set forth in Section 5.3 E adjusted from time to time by the ratio of Commonwealth's current average transition charge applicable to retail rate schedules as on file with the MDTE, and the sum of \$0.03159 per kWh and the Transition Cost Adjustment from Section 5.3 G.~~ *to reflect* *as* *will be adjusted*

- (b) The Agreement shall remain in full force and effect in accordance with the terms thereof except as such terms are explicitly modified by the provisions of this Second Amendment.

Section 3: Miscellaneous

- (a) This Second Amendment may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Amendment to be executed by their respective representatives thereunto duly authorized as of the day and year first above-written.

COMMONWEALTH ELECTRIC COMPANY

By: _____

Russell Wright, President

SOUTHERN ENERGY CANAL, L.L.C.

By: _____

Sean Murphy, President

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ATTACHMENT 2
INITIAL SERVICE AGREEMENT FOR
BACK-UP AND MAINTENANCE SERVICE

**SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE**

AGREEMENT made effective December 30, 1998 by and between **COMMONWEALTH ELECTRIC COMPANY**, a Massachusetts corporation having a place of business at 2421 Cranberry Highway, Wareham, Massachusetts 02571 ("Commonwealth"), and **SOUTHERN ENERGY CANAL, L.L.C.**, a Delaware limited liability company with its principal place of business at 9 Freezer Road, Sandwich, Massachusetts 02563 ("Southern Canal").

ARTICLE I: DESCRIPTION OF SERVICE

- 1.1** Southern Canal is owner of the Canal Station, an electric generating facility consisting of Canal Unit 1 and Canal Unit 2 located in Sandwich, Massachusetts (together, the "Canal Units"). The Canal Units are located within the service territory of Commonwealth, and Commonwealth agrees, subject to the terms set forth in this Agreement, to provide Southern Canal with Back-Up and Maintenance Service (as defined in Section 1.2 and Section 1.4, respectively, below). Service under this Agreement will be provided at the 23 kilovolt ("KV") voltage level to deliver the Canal Units' electric power requirements in order to operate lights, pumps, equipment, and other facilities and devices located at the Canal Units, when the Canal Units are out of service. Such power requirement is customarily called "Station Service."
- 1.2** Back-Up Service is defined as electric service delivered by Commonwealth to provide Station Service, when either or both of the Canal Units is unexpectedly out of service.
- 1.3** Initially, Commonwealth agrees to deliver to Southern Canal a minimum quantity of Station Service for each Canal Unit to be referred to as the Initial Back-Up Capacity. Commonwealth and Southern Canal agree that the Initial Back-Up Capacity to be delivered by Commonwealth is 21,000 kilovolt ampere ("KVA") for Canal Unit 1 and 17,000 KVA for Canal Unit 2.
- 1.4** Maintenance Service is defined as electric service delivered by Commonwealth to provide Station Service when either or both of the Canal Units is taken out of service for scheduled maintenance.
- 1.5** Southern Canal must apply for Maintenance Service with Commonwealth at least three months in advance of any scheduled outage, which outage shall not normally occur during summer or winter peak periods as determined by Commonwealth. If Southern Canal desires service during such peak periods, Commonwealth will provide such service under the provisions of Back-Up Service.
- 1.6** Commonwealth shall respond to Southern Canal's application for Maintenance Service within one month following receipt by Commonwealth of a completed application.

ARTICLE II: TERM

- 2.1** This Agreement shall become effective upon the date first above-written and shall continue for an initial term of one (1) year and thereafter until terminated by the giving of thirty (30) days' written notice of termination by one party to the other.

ARTICLE III: SUPPORT OF FACILITIES

- 3.1** Southern Canal shall own, operate and maintain, in a manner acceptable to Commonwealth and solely at the cost of Southern Canal, all facilities at and beyond Southern Canal's side of the Delivery Points (as defined in Section 4.1 below) deemed necessary and appropriate by Commonwealth to receive and utilize Commonwealth's service. Maintenance of such facilities shall be subject to the review and approval of Commonwealth, but shall be and remain solely the obligation and responsibility of Southern Canal. Commonwealth shall have the right to inspect and test all such facilities from time to time during the term of this Agreement.
- 3.2** Upon notification by Commonwealth to Southern Canal that the nature of Southern Canal's load is causing any condition on Commonwealth's system which results in an unacceptable deterioration of the quality of electric service to other customers of Commonwealth, as determined solely by Commonwealth, Southern Canal shall promptly modify its electric facilities at its own expense, or, at Commonwealth's option, shall reimburse Commonwealth for its reasonable expenses for modification of Commonwealth's facilities, to the extent deemed necessary by Commonwealth to eliminate such adverse conditions on its system. For purposes of this section, Commonwealth acknowledges that the facilities are adequate for the delivery of service under this Agreement for the current configuration of the Canal Units.

ARTICLE IV: DELIVERY

- 4.1** The Delivery Points for service to Canal Unit 1 and Canal Unit 2 supplied by Commonwealth hereunder shall be the connections with the high voltage windings of the two 22/4.16 KV Reserve Station Service Transformers located in the Canal Switchyard adjacent to the Canal Station. Such service shall be delivered in the form of three phase, four wire, sixty hertz alternating current at 23,000 volts nominal.
- 4.2** The delivery of service for Canal Unit 1 will normally be made from Commonwealth's Unit 1 345/115/23 KV Autotransformer located in Commonwealth's portion of the Canal Switchyard. The delivery of service for Canal Unit 2 will normally be made from Commonwealth's Unit 2 345/115/23 KV Autotransformer located in Commonwealth's portion of the Canal Switchyard. The source of Station Service to either Canal Unit 1 or Canal Unit 2 is at the sole discretion of Commonwealth.

ARTICLE V: RATES AND CHARGES

- 5.1** The following rates and charges shall be applied to Canal Unit 1 and Canal Unit 2, separately,

including the determination of the Initial Back-Up Capacity and the calculation of annual minimum charges as set forth below.

5.2 The Back-Up Capacity for the current billing period shall be the greater of : (1) the Initial Back-Up Capacity mutually agreed upon, or (2) the maximum 15-minute demand upon Commonwealth's system for Back-Up Service in KVA, established in the peak period of the current billing month. The peak period shall be as defined in Commonwealth's Large General Time-of-use Rate G-3, currently M.D.T.E. No. 371, and as in effect from time to time.

5.3 Back-Up Service charges per month shall be the sum of the charges described in items A through G of this Section 5.3:

A. Administrative Charge: \$270.00

B. Customer Charge: \$900.00

C. Distribution Charge: \$5,600

D. Transmission Capacity Charge:

The Transmission Capacity Charge shall be \$0.12 per KVA times the sum of the daily maximum 15-minute KVA back-up demands established during the peak period of the billing month.

However, the minimum annual charge for a calendar year period for Transmission Capacity shall not be less than \$3.22 multiplied by the maximum Back-Up Capacity established during such calendar year. The minimum annual charge for the initial calendar year period shall be prorated commensurate with the actual months for which service was provided under this provision.

E. Transition Charge:

The Transition Charges per KVA applicable to the sum of the daily maximum 15-minute KVA back-up demands established during the peak period of the billing month are as follows:

<u>Billing Month</u>	<u>Charge</u>
January, July, August, December	\$1.93
Remaining months	\$0.41

F. Supplier Service (Optional):

Default Service: As in effect per Tariff

G. Other Charges:

Back-Up Service is subject to Commonwealth's Transition Cost Adjustment currently M.D.T.E. No. 380, Transmission Service Cost Adjustment currently M.D.T.E. No. 381, Demand-Side Management Charge currently M.D.T.E. No. 382, Renewable Energy Charge currently M.D.T.E. No. 383 and Default Service Adjustment currently M.D.T.E. No. 387 each as in effect from time to time.

H. Charges in Paragraphs C. and D. above are subject to change from time to time in accordance with Massachusetts Department of Telecommunications and Energy ("MDTE") approval of Commonwealth's marginal cost study.

5.4 Maintenance Service charges per month shall be in accordance with the following:

Maintenance Service shall be the sum of the charges described in items (C), (E), (F) and (G) in Section 5.3 and shall exclude charges set forth in the Transmission Capacity Charge of Section 5.3(D). For billing purposes, Maintenance Service shall be included with Back-Up Service, if any, when determining charges under Section 5.3(C) Distribution Charge, (E) Transition Charge, (F) Supplier Service and (G) Other Charges as listed above.

ARTICLE VI: BILLING AND PAYMENTS

- 6.1 All bills rendered hereunder are net and payable upon presentation. Any bill not paid within 25 days from the date issued shall be subject to a late payment charge at the rate of one and one-half percent (1 ½%) per month on the unpaid balance from the date issued until the date of payment. Such late payment charge and terms of payment shall be modified as necessary to comport with Commonwealth's Terms and Conditions - Distribution Service currently M.D.T.E. No. 360, and as in effect from time to time ("Terms and Conditions").**

ARTICLE VII: METERS AND METERING

- 7.1 Commonwealth shall supply, own and maintain the meters and related equipment it deems necessary to measure electricity delivered to the Canal Units at Southern Canal's expense. Southern Canal agrees to supply one or more locations at the Canal Units suitable to Commonwealth for the installation of Commonwealth's metering equipment, at no cost to Commonwealth.**
- 7.2 In the event that a meter should fail to register the full amount of energy delivered or the maximum demand, Commonwealth may bill Southern Canal on the basis of its most accurate estimates. Such estimates shall be binding upon both Commonwealth and Southern Canal.**

ARTICLE VIII: MISCELLANEOUS PROVISIONS

- 8.1 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and all previous agreements, discussions, communications and correspondence with respect to the subject matter hereof are superseded by the execution of this Agreement.**
- 8.2 This Agreement is not intended to modify or affect any rights or responsibilities of the parties pursuant to agreements between Commonwealth and Southern Canal for purchase of capacity and energy from the Canal Units, and is intended solely for the purpose stated above in Article I to provide the Canal Units with Back-Up Service and Maintenance Service.**
- 8.3 This Agreement may not be modified or amended except in writing signed by or on behalf of both parties by their duly authorized officers.**
- 8.4 All notices required or permitted under this Agreement shall be in writing, unless otherwise specifically set forth herein, and shall be deemed to have been properly given when delivered personally or deposited in the U. S. mail, first class postage prepaid, addressed as follows, or to such other person or address as may be designated by a party at any time and from time to time, in accordance herewith:**

If to Commonwealth: **Manager Electric Supply Administration
Commonwealth Electric Company
2421 Cranberry Highway
Wareham, MA 02571**

If to Southern Canal: **Southern Energy Canal, L.L.C.
9 Freezer Road
Sandwich, MA 02563
Attention: Henry Coolidge**

- 8.5 The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws in effect therein.**
- 8.6 The price to be paid for electricity hereunder and all other terms hereof shall be subject to review and determination by the MDTE under applicable statutes of the Commonwealth of Massachusetts or regulations of the MDTE.**
- 8.7 Except as otherwise provided in this Agreement, Commonwealth's Terms and Conditions shall apply to the terms of this Agreement.**
- 8.8 This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto, provided, however, that no assignment by Southern Canal or any**

successor or assignee of Southern Canal of its rights and obligations hereunder shall be made or become effective without the prior written consent of Commonwealth in each case obtained.

- 8.9 This Agreement and all rights and obligations of the parties hereto are subject to all applicable state and federal laws and all duly promulgated orders and duly authorized actions of governmental authorities effectively exerting jurisdiction in the premises.
- 8.10 Commonwealth hereby reserves the right to terminate or interrupt or reduce the electric service and/or the voltage thereof supplied to Southern Canal hereunder, in the event of the breach of a material obligation of Southern Canal hereunder without recourse to Southern Canal, or if it determines, in its sole discretion, that continuing such service may adversely affect the quality of service to other customers of Commonwealth, or may adversely affect the public safety or the safety of Commonwealth's personnel or the condition of Commonwealth's property.
- 8.11 Commonwealth shall not be responsible for performance hereunder or incur any liability, cost or expense of any kind, including that for personal injury (including death) or property damage, in the event that such performance is prevented, in whole or in part, by any of the following: the statute or regulation or order of any court or public authority having or purporting to have authority over such performance; the loss, diminution or impairment of electric supply from Commonwealth's generating suppliers, or the systems of others with which it is interconnected; a break or fault in Commonwealth's transmission or distribution system; by the failure or improper operation of Commonwealth's transformers, switches or other equipment necessary for electric transmission and distribution; or by reason of a storm, flood, fire earthquake, explosion, civil disturbance, labor dispute or strike, an Act of God or public enemy, or any other cause beyond the reasonable control of Commonwealth. In the event of the occurrence of any of the foregoing, Commonwealth shall use reasonable efforts to overcome such cause, to resume full performance.
- 8.12 The parties hereto acknowledge and agree that Commonwealth shall not, in any event except that of its own negligent or intentional acts or omissions, be liable to any party for any direct damages, whether arising in tort, contract or otherwise, associated with the performance of its obligations under this Agreement, or with the exercise of any of its rights as set forth herein. In no event whatsoever will Commonwealth be liable to any party for consequential, indirect, or special damages.
- 8.13 Southern Canal assumes full responsibility for the use of electricity delivered and (optionally) furnished by Commonwealth hereby, and for the condition, suitability, and safety of any and all wires, cables, devices and appurtenances energized or related equipment on Southern Canal premises, or owned or controlled by Southern Canal. Southern Canal shall indemnify and hold harmless Commonwealth from and against any and all claims or actions of any nature, including such claims or actions for personal injury (including death) or property damage arising directly or indirectly from the operation or presence of the aforementioned

wires, cables, devices, appurtenances and related equipment (which are not the property of Commonwealth); or arising directly or indirectly from the failure of Southern Canal to perform its duties and obligations as set forth in this Agreement; or arising directly or indirectly from the improper use of the electricity or the aforementioned wires, cables, devices and appurtenances or equipment.

- 8.14 Any and all equipment or facilities furnished by Commonwealth hereunder, unless specified otherwise, shall be and remain the property of Commonwealth, and, if placed on the property of Southern Canal, Southern Canal shall be responsible for the safekeeping of the same, and further Southern Canal shall make reasonable efforts to protect the same from damage or interference.
- 8.15 This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the day and year first above-written.

COMMONWEALTH ELECTRIC COMPANY

By: Deborah A. McLaughlin
Deborah A. McLaughlin, President

SOUTHERN ENERGY CANAL, L.L.C.

By: Henry Coolidge
Henry Coolidge, President

Doc. #12839

ATTACHMENT 3
FIRST AMENDMENT TO SERVICE AGREEMENT FOR
BACK-UP AND MAINTENANCE SERVICE

FIRST AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE
BETWEEN
COMMONWEALTH ELECTRIC COMPANY
AND
SOUTHERN ENERGY CANAL, L.L.C.

**FIRST AMENDMENT
TO
SERVICE AGREEMENT
FOR BACK-UP AND MAINTENANCE SERVICE**

Agreement of Amendment made this 15th day of January, 1999 by and between COMMONWEALTH ELECTRIC COMPANY, a Massachusetts corporation having a place of business at 2421 Cranberry Highway, Wareham, Massachusetts 02571 ("Commonwealth"), and SOUTHERN ENERGY CANAL, L.L.C., a Delaware limited liability company with its principal place of business at 9 Freezer Road, Sandwich, Massachusetts 02563 ("Southern Canal") ("Amendment").

Section 1: Scope of Agreement

- (a) Southern Canal and Commonwealth are parties to an agreement dated December 30, 1998, ("Agreement") under which Commonwealth supplies Back-Up and Maintenance Service to Canal Unit 1 and Canal Unit 2 located in Sandwich, Massachusetts (together, the "Canal Units").
- (b) Article V of the Agreement provides the Rates and Charges applied to the Canal Units for Back-Up and Maintenance Service under the Agreement.
- (c) Section 5.3 E. of the Agreement provides the Transition Charge applicable to service under the Agreement. Commonwealth and Southern Canal have agreed to amend this Section as described below.

Now, therefore, the parties hereto, each in consideration of the agreement of the other, hereby agree as follows:

Section 2: Amendment

- (a) The Agreement is amended by revising Section 5.3 E. as follows:

E. Transition Charge:

The Transition Charges per KVA applicable to the sum of the daily maximum 15-minute KVA back-up demands established during the peak period of the billing month are as follows:

<u>Billing Month</u>	<u>Charge</u>
January, July, August, December	\$1.95
Remaining months	\$0.42

- (b) The Agreement shall remain in full force and effect in accordance with the terms thereof except as such terms are explicitly modified by the provisions of this Amendment.

Section 3: Miscellaneous

- (a) This Amendment may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Amendment to be executed by their respective representatives thereunto duly authorized as of the day and year first above-written.

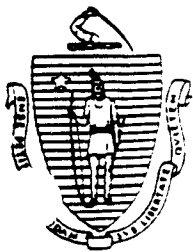
COMMONWEALTH ELECTRIC COMPANY

By: James D. Rappoli
James D. Rappoli
Financial Vice President and Treasurer

SOUTHERN ENERGY CANAL, L.L.C.

By: Henry Coolidge
Henry Coolidge, President

ATTACHMENT 4
DEPARTMENT LETTER ORDER
DOCKET EC 98-11, FEBRUARY 25, 1999



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**
100 CAMBRIDGE STREET, 12TH FLOOR
BOSTON, MA 02202

A. PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

DANIEL A. GRABAUSKAS
DIRECTOR OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

JANET GAIL BESSER
CHAIR

JAMES CONNELLY
COMMISSIONER

W. ROBERT KEATING
COMMISSIONER

EUGENE J. SULLIVAN, JR.
COMMISSIONER

PAUL B. VASINGTON
COMMISSIONER

February 25, 1999

John Cope-Flanagan, Esq.
COM/Energy Services Company
One Main Street, P.O. Box 9150
Cambridge, MA 02142-9150

RE: Commonwealth Electric Company, EC 98-11
Back-Up and Maintenance Service Agreement with Southern Energy Canal, L.L.C.

Dear Mr. Cope-Flanagan:

On December 23, 1998, Commonwealth Electric Company ("Commonwealth" or "Company"), pursuant to G.L. c. 164, § 94, petitioned the Department of Telecommunications and Energy ("Department") for approval of an agreement ("Agreement") between Commonwealth and Southern Energy Canal, L.L.C. ("Southern Canal") concerning the delivery of back-up and maintenance power to Southern Canal's Canal 1 and Canal 2 generating facilities ("Canal Units").¹ On January 19, 1999, Commonwealth filed an amendment ("Amendment") to the Agreement (together, "Amended Agreement"). The Amendment reflects the Company's most recently approved transition charge (Amendment at 1-2; IR-DTE-1-5).

Commonwealth states that the Amended Agreement involves the delivery of power needed to operate essential facilities and devices at the Canal Units' generating station (Application Letter at 1; Agreement at 3). Commonwealth states that such power, known as Station Service, is required to power lights, pumps, fuel heating equipment, and other facilities and devices located at the generating station (Application Letter at 1). Commonwealth states that when the Canal Units are operating, Station Service is furnished by those units (*id.*). However, according to Commonwealth, if the Canal Units are not operating, then Station Service must be replaced (*id.*). Under the Amended Agreement, Commonwealth's transmission and distribution facilities would be used to deliver Station Service power to the

¹On January 19, 1999, Commonwealth responded to eight Department information requests.

Canal Units during times when the Canal Units are not operating (Agreement at 4, IR-DTE-1-1).² The term of the Agreement is for one year (Agreement at 3). Thereafter, either party may terminate the Agreement by providing the other party thirty days' advanced written notice (id.).

In Investigation by the Department to Review and Revise the Standard of Review for Electric Contracts Filed Pursuant to G.L. c. 164, § 94, D.P.U./D.T.E. 96-39-A (October 27, 1998), the Department articulated its requirements regarding electricity contracts entered into under G.L. c. 164, § 94. Specifically, the Department stated that

[i]n each request for approval of an electricity contract, the distribution company must demonstrate that: (1) the discounted rate exceeds the company's marginal costs of distribution; (2) a discount to one customer is not recoverable from remaining ratepayers; and (3) the electricity contract is consistent with the law and the Department's policies and precedent. Further, the Department reaffirms policies articulated in D.P.U. 96-39, at 2 (August 30, 1996). First, the formulas and rates applicable under the electricity contract must be explicit, or at a minimum, readily derived from other information in the contract. Id. Second, the contract must indicate that the purchaser of power under the contract will be subject to a non-bypassable transition charge. See G.L. c. 164, § 1G. However, in light of the changes brought about by the Restructuring Act, we no longer find it necessary to limit the duration of a proposed electricity contract that is otherwise consistent with the law and Department's policies and precedent.

Commonwealth contends that the Amended Agreement complies with these five criteria (IR-DTE-1-2). First, Commonwealth states that the rates and charges under this Agreement are not discounted (id.). Commonwealth asserts that the rates and charges are based on the costs of service to this customer,³ and that these rates and charges exceed marginal cost

² Commonwealth notes that this arrangement is pursuant to a contract rather than under a general service tariff because of the timing and pattern of this service is unpredictable and intermittent (IR-DTE-1-6).

³ With respect to the proposed monthly distribution charge, Commonwealth states that this charge was developed based on (1) costs of the specific 23 kilovolt ("KV") facilities used to deliver Station Service to the Canal Units, (2) a cost estimate for an autotransformer that is to be replaced in the near future, and (3) an autotransformer allocation ratio developed by the New England Power Pool for allocating the costs of common facilities (Application Letter at 2). With respect to the proposed transmission charge, Commonwealth states that this charge (1) reflects Commonwealth's current
(continued...)

(IRs-DTE 1-3, 1-6). In support of these assertions, Commonwealth provided cost tables and summaries quantifying its marginal costs (Agreement at Att. 3; IR-DTE 1-2, at Att.). Second, Commonwealth claims that the costs required to serve this customer are fully recovered from Southern Canal and that no costs are allocated to other customers (IR-DTE-1-2). In support of this claim, Commonwealth (a) provided the cost basis for the Administrative Charge, (b) explained that the Customer Charge is the same charge applicable to all Rate G-3 time-of-use customers, (c) referenced its analyses of transmission and distribution facility marginal costs, and (d) explained that the Transition Charge has been amended to reflect charges approved by the Department in D.T.E. 98-78/83 (Amendment at 1-2; IR-DTE-1-3). Third, Commonwealth notes that this Amended Agreement is consistent with Department rate design policies, including marginal cost pricing (IRs-DTE-1-2, 1-3). Fourth, Commonwealth states that the rates and charges are explicitly stated in the Amended Agreement either at specified rates or by reference to Commonwealth's filed tariffs (IR-DTE-1-2). Fifth, Commonwealth notes that the Amended Agreement expressly provides for a non-bypassable Transition Charge (Agreement at 5; Amendment at 1).

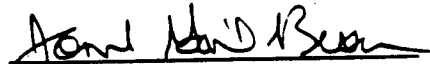
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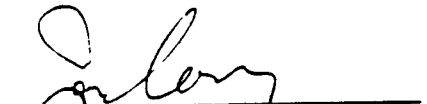
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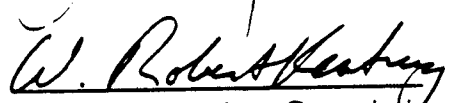
estimate of its marginal transmission costs, (2) is consistent with its FERC-approved transmission tariffs, and (3) includes a minimum annual charge (Application Letter at 2; IRs-DTE 1-3, 1-6).

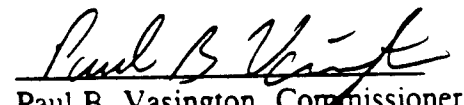
Based on our review of the Amended Agreement and supporting material, the Department finds that the Company has demonstrated compliance with the Department's criteria for electricity contracts entered into under G.L. c. 164, § 94. Accordingly, the Department approves the Amended Agreement.

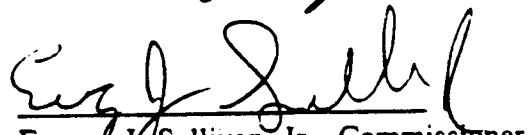
Sincerely,


Janet Gail Besser, Chair


James Connelly, Commissioner


W. Robert Keating, Commissioner


Paul B. Vasington, Commissioner


Eugene V. Sullivan, Jr., Commissioner

cc: Mary Cottrell, Secretary
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ATTACHMENT 5
CALCULATION OF DEMAND-BASED TRANSITION CHARGES

Commonwealth Electric Company
Canal Station Service Back-Up Power Rate
Second Amendment

<u>Line No</u>	<u>Description</u>	<u>Amount</u>	
1	Transition Charge Basis (for existing prices)	\$0.03159	\$/kwh
2	Transition Cost Adjustment	<u>0.00000</u>	"
3	Net Transition Charge Basis	\$0.03159	"
4	Current Average Transition Charge	\$0.02871	\$/kwh
5	Ratio	(Line 4 / Line 3)= 0.908832	
	Current Transition Charge		
6	Peak	\$1.95	\$/kva
7	Off-Peak	\$0.42	\$/kva
	New Transition Charge		
8	Peak	(Line 5 * Line 6)= \$1.77	\$/kva
9	Off-Peak	(Line 5 * Line 7)= \$0.38	\$/kva